

DOCUMENT RESUME

ED 140 480

EA 009 654

AUTHOR Fogarty, James S.
TITLE Emerging Trends in Court Rulings Affecting Daily Operations of the Schools.
PUB DATE 76
NOTE 29p.
EDRS PRICE MF-\$0.83 HC-\$2.06 Plus Postage.
DESCRIPTORS *Civil Liberties; Corporal Punishment; Court Cases; Court Litigation; *Due Process; Elementary Secondary Education; Higher Education; Homosexuality; Job Tenure; *School Integration; Search and Seizure; *Student Rights; *Supreme Court Litigation; *Suspension; Teachers

ABSTRACT

Traditionally, the public schools have been primarily within the domain of local administrators; however, over the past two decades, the courts have become involved more and more in decisions that affect daily operational procedures of the schools. The purpose of this paper is to examine current issues in educational law, including suspension, corporal punishment, search and seizure, teacher rights, school desegregation, and homosexual rights. The analysis is directed to a close examination of individual versus corporate rights in order to establish a "tone" of how the courts have been ruling. This examination allows some predictions to be made about future court actions. Relevant dissenting opinions are noted in the process of establishing the tone. Representative cases have been carefully selected from each area considered. It is not the writer's intent to give indepth coverage of any one topic but, rather, to provide insight based on a comprehensive view. (Author/IRT)

* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *

ED140480

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY.

Emerging Trends in Court Rulings
Affecting Daily Operations of the Schools

A Paper in
Educational Administration 576

for
Dr. David Carter

by
James S. Fogarty

Summer 1976

EA 009 654

Traditionally, the public schools have been primarily within the domain of local administrators; however, over the past two decades, the courts have become involved more and more in decisions which affect daily operational procedures of the schools. The purpose of this paper is to examine current issues in education including: suspension, corporal punishment, search and seizure, teacher rights, the rights of homosexuals in education and desegregation. The analysis will be directed toward a close examination of individual versus corporate rights in order to establish a "tone" of how the courts have been ruling. This examination will allow some predictions to be made about future court actions. Relevant dissenting opinions will also be noted in the process of establishing the tone. Representative cases have been carefully selected from each area. It is not the writer's intent to give an in-depth coverage of any one topic; but, rather, to provide insight based on a comprehensive view.

Suspension

The extension of due process rights to children can be traced back to several cases. Probably best representative is In Re Gault, 387 U.S. 1 (1967) in which the Supreme Court decided that juvenile proceedings require minimum due process protection. In this case, the appellants' fifteen year old son, Gerald Gault, was taken into custody as the result of a complaint that he had made lewd telephone calls. Following hearings before a juvenile court judge, Gerald was ordered committed to the State Industrial School in Arizona as a delinquent. The appellants brought a habeous corpus action in the State courts challenging

Arizona's Juvenile Code as denying the forementioned rights. The State court upheld the code holding that these rights were implied and the proceedings did not offend them. The Supreme Court reversed this decision holding that Gerald's rights to due process were indeed violated. Justice Stewart dissented from the majority opinion of the court stating that the proceedings involved were juvenile proceedings and not criminal trials. Their intent is substantially different from criminal proceedings and, although minimum due process procedures are necessary, the formalities of a criminal indictment are not needed -- concluding that he would have dismissed the appeal.

Tinker v. Des Moines Community School District, 393 U.S. 503 (1969) substantially furthered the concept of guaranteed constitutional rights for the student. A constitutional challenge for the right to wear black arm bands in school in protest of the Viet Nam War brought the issues of first and fourteenth amendment rights to the child in the normal school environment. Without elaborating on the specifics of the case, it was determined that students do not shed their constitutional rights at the schoolhouse gate. This would have profound implications for future decisions on the protection of free speech for teachers and students and the guarantee of the fourteenth amendment protections. A classic dissent by Justice Black cautioned against an age where the power to control pupils is shifted from the officials in state supported schools to the Supreme Court. This would in turn be followed by a flood of litigation from children claiming

that their constitutional rights had been violated. This has, indeed, come true.

Goss v. Lopez, 419 U.S. 565 (1975) refined the due process rights in suspension cases. An Ohio school student and his friends had been suspended for misconduct for ten days without a hearing. The student brought a class action suit against appellant school officials seeking a declaration that the Ohio Statute allowing these suspension procedures was unconstitutional. He also asked to have his records cleared. A three-judge district court declared appellees were denied due process since students do have property rights in a public school education and ten days did not constitute a de minimis punishment. The court concluded that students in such situations should be guaranteed fourteenth amendment protection. The most significant part of the decision was the delineation of procedures necessary to guarantee due process protection to children. The court concluded that due process in connection with a suspension of ten days or less requires that a student be given oral or written notice of the charges against him; and, if he denies them, an explanation of the evidence which the authorities have. Finally, he must be afforded the opportunity to present his version of what happened. Further, notice and hearing should precede his removal from school unless his presence endangers other students, property, or disrupts the academic process. In this case, due process must be afforded as soon after as is practical.

The Supreme Court affirmed this in a 5-4 decision. A dissenting opinion filed by justices Burger, Blackmun, Powell, and Renquist demonstrated a concern for the extent that the court is becoming involved in the operation of public schools which could adversely affect the quality of education. They further felt that the Ohio law did not infringe upon the students' interest in education. The dissenting justices went so far as to list areas where new challenges may be made in the future based on constitutional rights. These include: how to grade a student's work, whether he is required to have certain subjects, what vocational emphasis he should choose and other discretionary decisions which are not explicit areas guaranteed by the constitution. The writer feels that a local board would have difficulty defending such decisions since four justices said that they could become potential issues. Thus, the dissenting opinion opens schools to further litigation.

The Wood v. Strickland, 420 U.S. 308 (1975) decision places an additional burden on local school officials. It was decided that if a local official's action denied a student his constitutional right, he is liable for damages as an individual. It assumes that these officials should know the student's constitutional rights and concluded that if they disregard them they are not acting in good faith. The Arkansas case concerned students who were suspended for violating a school regulation prohibiting the use of alcoholic beverages at school functions. Basically, they held that proper procedures to protect their fourteenth amendment rights were not followed and asked for injunctive relief and punitive and monetary damages. The Supreme Court

vacated the judgment of the Court of Appeals and remanded the case to that court. Justice White expressed the forementioned view of five justices that a board member is not immune from damages under certain conditions.

Once again, Justices Powell, Burger, Blackmun and Renquist dissented stating that the view imposes a harsh standard for public school officials and leaves little substance to the doctrine of qualified immunity. Further, a double standard is prevailing for public officials. Schever v. Rhodes, 416 U.S. 232 (1974) allowed a less restrictive standard for the Governor and Adjutant General of the State of Ohio in the Kent State University killings. The court held that the forementioned were not liable in light of all circumstances and the doctrine of qualified immunity for executive officers performing official acts.

A further concern was expressed in the dissenting view in that the decision would make it more difficult to find qualified individuals who would be willing to serve the process of education in the country.

Corporal Punishment

Two cases involving corporal punishment proceedings will be examined to determine the court's rulings and their effect on public school operations, parents' rights, and due process rights of the child.

Glaser v. Marietta, 351 F. Supp. 555 (1972) dealt directly with the scope of parents' rights in disciplining their children. William Glaser was a seventh grade pupil in junior high school. He had been

in an altercation with another boy. After concluding that William was at fault, the principal decided to administer corporal punishment since William had already been admonished by other teachers on several occasions about hostility toward the other boy. William told the principal that his mother did not want him corporally punished. When the principal told him it would be corporal punishment or suspension, he chose the former. William's mother and William sought court action to enjoin the school district from inflicting corporal punishment.

The court reviewed the district's procedures regarding due process rights and found them reasonable. They also found the district's procedures for administering corporal punishment to be fair and just. They did, however, award injunctive relief to the plaintiffs since they felt that the parents' desire to not have the child corporally punished held precedence over the school's desire to maintain a proper environment. They held that parents' rights can only be overruled when the state shows a powerful counter-interest which outweighs the rights of the parents. This delicate balance is not easy to determine.

An entirely different view has emerged regarding corporal punishment, as the result of Baker v. Owen 395 F. Supp. 294 (1975). A sixth grade student and his mother brought action against a school principal and others, claiming their constitutional rights were violated when the child was corporally punished over the mother's objection. U.S. District Court made several decisions which have implications important to all those involved in education. The court reiterated: students must be given minimal due process and that,

although the fourteenth amendment generally gives parents the right to control discipline over their child, the state has a countervailing interest in maintaining order which includes allowing school officials to administer corporal punishment. They also decided that spanking did not constitute cruel and unusual punishment.

Specific procedures were listed in the case for administering corporal punishment. First, the child must be warned that a specific misbehavior will result in corporal punishment. Next, spanking is to be used only after less drastic deterrents fail. Third, spanking should be done only in the presence of another staff member. And, finally, report to parents in writing why the child was spanked should they request it.

On October 20, 1975, the U.S. Supreme Court affirmed this decision with no dissenting votes recorded. This has thus become the law of the land affecting districts throughout the nation.

A final point must be made concerning corporal punishment. Flygale (1976) pointed to the fact that most students who are corporally punished are male and that such a practice may be illegal under Title IX Federal regulations prohibiting sex discrimination. He concluded that challenges in the future may bring the days of corporal punishment in schools to an end.

Search and Seizure

Issues of search and seizure once again try to bring into balance student rights versus the maintenance of a proper educational environment. The Supreme Court has not set any precedents in the

matter; thus, decisions from lower courts are conflicting and confusing.

The question of whether fourth amendment prohibition against unreasonable searches without probable cause and the use of a search warrant has been dealt with in various ways. In general, a primary holding has been that school officials act as state officials in conducting searches but the doctrine of in loco parentis also applies. This means that a balance must be found which allows the individual some degree of protection as would be the case when a policeman or other government agent searches the student and the concept that the school official still operates in loco parentis, having a greater degree of control over the student in order to maintain a proper environment. The prevailing concept which applies to school searches is that of reasonable suspicion rather than probable cause. In this case, the search is generally conducted by a school official. In People v. Jackson, 219 N.Y.S. 2d. 731 (1971), the court concluded that the compelling interests of in loco parentis justify any search taken under reasonable suspicion. They said that public school officials need flexibility in achieving goals of public education and that it would not be fair to try to impose the probable cause standard. In general if the evidence has been seized by a school official acting alone, it is also admissible in criminal proceedings against the student.

The definition of reasonable suspicion has been somewhat vague. In State v. Young, 216 S.E. 2d. 586 (1975), the court concluded that a furtive gesture of a student quickly placing something into his pocket was reasonable suspicion and grounds for the search of his person. On

the other hand, a New York court in People v. D., 34 N.Y. 2d. 483 (1974) concluded that two quick trips to the bathroom by a student who had been a suspected drug dealer did not constitute reasonable suspicion even though the administration had information from a confidential source.

To cast greater doubt on the parameters of the reasonable suspicion standard, the Louisiana Supreme Court in State v. Mora, 307 So. 2d. 317 (1975) concluded that a search on school property by a school official for some unlawful substance does not constitute an exception to the need for a search warrant and fourth amendment protection applies. It stated further that evidence seized in such a manner would not be admissible in criminal proceedings.

A different standard seems to prevail with regard to college students and dormitory searches. In Smyth v. Lubbers, 398 F. Supp. 777 (1975), the court found that the probable cause standard and warrant requirements were applicable to dormitory searches by college officials. The court held that the students were adults entitled to the same protection as any other individual, and that the expectation of privacy was present in the dorm room since for all practical purposes this was his home. This represents a considerable contrast from a precedent set in Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725 (1968) which held that evidence seized in a joint search by police and university officials was admissible in disciplinary proceedings. It further held that such searches were made to further university purposes which were consistent with Piazzola v. Watkins, 442 F. 2d. 284 (1971) where such searches were indeed legal.

Also of important consideration in search and seizure cases is a determination of who initiated the search and for what reason. If a joint search using the police is conducted for school purposes, the reasonable suspicion standard applies. However, if the police initiate the search to secure evidence for criminal prosecution, fourth amendment protection seems to apply as was the case in State v. Young, 216 S. E. 2d. 586 (1975). That court made the point that the reasonable suspicion standard will pass constitutional requirements only if the search is free from involvement of law enforcement personnel.

It is obvious to the writer that constitutional challenges will be made in the future and major precedents must be set by Supreme Court decision. A great need for consistency must be established among lower courts. Finally, the line between fourth amendment protection and the administration's need to maintain a proper educational environment must be clearly delineated and if differences exist between elementary and secondary students or college students, this difference must also be defined so that protection is uniform.

Teacher Tenure

The question of the status of teachers with tenure has been essentially protected by tenure statutes throughout the country. An examination of the scope of property rights and liberty interests can be made based on two cases. The first case involved renewal of a contract for a non-tenured teacher. The second involved renewal of a contract for a teacher who had been teaching ten years, but the place where he taught did not have a formal tenure policy.

Board of Regents of State Colleges, et al. v. Roth, 408 U.S. 564 (1972) was a primary step in defining the scope of fourteenth amendment protection to non-tenured teachers. Prior to this decision, the question of tenure had been in obvious contradiction varying from court to court. The primary outcome was that the fourteenth amendment does not require a hearing prior to non-renewal of a non-tenured teacher's contract unless the non-renewal has deprived the teacher of property rights or liberty interests. The respondent had been hired for one year at a university in Wisconsin. His contract wasn't renewed and no hearing was granted.

Several Supreme Court Justices took exception to this decision; they were Justices Douglas, Marshall, and Brennan. The judges felt that a hearing should be used and that the individual did have property interests in a public position. They also felt that true reasons for dismissal may be hidden. An example would be the first amendment issue of freedom of speech. A verbal non-tenured teacher could be dismissed for speaking out against the administration even though that reason might not have come to light. The right to a hearing would ascertain whether the stated grounds were real or only a pretext. The justices were also concerned about arbitrary actions against teachers for less than substantial reasons. The justices felt that in cases where important interests of citizens may not be taken away (such as a driver's license), certainly the non-renewal of a teacher's contract should be of no less importance.

Perry, et al. v. Sindermann, 408 U.S. 593 (1972) reinstated a teacher who had been teaching for four successive years at a junior

college with one year contracts. He had ten successful years in education. The junior college in Texas had not adopted the tenure system. The Supreme Court upheld the Court of appeals thus reinstating the teacher, since in lieu of a formal tenure system, an expectancy to work had been developed entitling the teacher to property rights in the position. Justices Brennan, Douglas, and Marshall dissented saying that the issue was the denial of due process itself by non-renewal of his contract. Justice Marshall carried it further saying that the respondent should also have a written statement of the reasons for the non-renewal of his contract.

Since these two Supreme Court precedents, a new flood of cases have reached the courts where dismissed non-tenured teachers claim either property rights or liberty interests in their jobs. Criteria were set in the forementioned cases for property rights and liberty interests. In order to establish property rights, a person must have more than a desire or need for a job. He must have a legitimate claim of entitlement to it. For liberty interests, the respondent must prove that his termination imposes a stigma on him which will affect his ability to obtain another job or that the charges made against him might damage his standing in the community.

The decisions represent a serious setback to teacher rights and allow for a flood of allegations that the respondent teachers do indeed have liberty interests and property rights in their occupations.

Homosexuality

Issues involving homosexuality have come into prominence recently in education. Although lower courts have ruled on various aspects of

concern, the Supreme Court has not made any specific decisions regarding the rights of homosexuals in education. The cases presented here deal with hiring practices, dismissal, and revocation of teaching certificates.

Acanfora v. Board of Education of Montgomery County, 359 F. Supp. 843 (1973) dealt with the change of assignment of a homosexual from a Maryland classroom to other duties. Acanfora withheld information on his initial application when he was asked to disclose whether or not he had homosexual affiliations. Instead of ruling directly on the issue of hiring a homosexual, the court chose not to allow Acanfora's direct attack on hiring practices in the school.

Acanfora had appeared on several news programs discussing his problem with the Montgomery Board of Education. Federal District Court ruled that Acanfora's transfer and non-renewal of contract was not arbitrary and capricious because he went beyond reasonable limits to defend himself. The fourth circuit court of appeals upheld the decision but disagreed with the rationale. The court said that Acanfora was protected in his actions by the first amendment. He was not allowed to return to teaching, however, because he had practiced deception on the initial application and the court could not rule positively in such a case.

An obvious contradiction to the forementioned decision supporting Acanfora's right to speak has been found in several cases. Maryland District Court in Acanfora's case had discussed the right to privacy coupled with a duty to privacy. This implies that the teacher is obligated to keep certain actions confidential.

In Governing Board of the Mountain View School District of Los Angeles City v. Metcalf, 111 Cal. Rptr. 724 (1974) a sixth grade probationary teacher was dismissed for engaging in an act of oral copulation in a public restroom. The court concluded that this action was enough to conclude that he was, indeed, unfit to teach.

The contradiction and extent to which the rule of a duty to privacy extends will have to be challenged at the highest level in the future.

Morrison v. State Board of Education, 1 Cal. 3d. 214 (1969) stood as a landmark when it concluded that acts involving a question of immorality or moral turpitude resulting in a request for certificate revocation must be linked directly to a person's unfitness to teach. Morrison's position was upheld by the court since no relationship was clearly established.

Criminal homosexual activity has been found to be sufficient basis for revocation of a teaching certificate. In Savac v. State Board of Education, 57 Cal. Rptr. 69 (1957), a teacher was convicted on a charge of disorderly conduct for making sexual advances to an undercover police officer on a public beach.

It is important to note the courts' attitude toward homosexuals which is exemplified in the words used in the rationales in various cases, "Socially repugnant." McConnell v. Anderson, 451 F. 2d. at 196 (1971) is very representative of the tone judges have set in cases dealing with homosexuals. This view will come under attack from various organizations as society's attitude, in general, changes toward the homosexual.

Desegregation

Desegregation of schools has come into close focus in recent years. In Brown v. Board of Education, 34 U.S. 483 (1954), the court held that segregation of children in public schools on the basis of race deprives them of equal educational opportunity and denies them equal protection of the laws under the fourteenth amendment.

The question which has evolved in recent years is how far the court is willing to go in interpreting this ruling. On face value, it would seem that all segregation under all circumstances should be eliminated to guarantee the children in an area equal educational opportunity and protection under the fourteenth amendment. This is not necessarily the case, however.

Although the focus of this section will be on very recent court decisions, some groundwork must be laid to understand the background of how courts are currently ruling.

In Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), the court decided that in implementing the Brown decision, a choice of appropriate relief, depending on the case, must be made. The relief must correct conditions that offend the constitution. Most importantly, the court decided that "the nature of the violation determines the scope of the remedy." ...402 U.S., at 16.

This principle was used to extend an interpretation on desegregation in the Denver, Colorado case, Keyes, et al. v. School District No. 1, Denver, Colorado, et al., 413 U.S. 189 (1973). The court held that if schools are racially segregated in a substantial portion of a city as

the result of deliberate official acts, then segregation must be eliminated in the entire city.

The use of the term "deliberate official acts" puts limits on the concept of desegregation. The issue was soon to come to light when federal Judge Stephen Roth ordered the State Board of Education to submit a desegregation plan which would include Detroit and over fifty nearby school districts. The sixth circuit court of appeals affirmed the decision stating that it was the only way to secure the constitutional rights of black school students. The Supreme Court in Milliken v. Bradley, 418 U.S. 714 (1974) revised affirmation and held that before cross-district-bussing could be imposed, "it must be shown that racially discriminatory acts of state or local school districts or of a single school district, have been a substantial cause of inter-district segregation," 408 U.S. at 744. Such was not the case in the Detroit situation. Chief Justice Burger wrote the opinion that unless school officials in surrounding districts were somehow responsible for segregation, metropolitanwide relief could not be ordered. The swing Justice Potter Stewart filed a concurring opinion in this case but carried the responsibility one step further. He said rather than trying to prove suburban officials were responsible for segregation, which would be virtually impossible, it is enough to prove that if government officials, not just school officials, have contributed to segregation in community planning, area-wide desegregation could be ordered. He further discussed residential patterns in the surrounding area. If this is taken at face value, residential patterns could be enough to establish the need for area-wide desegregation.

None of the justices indicated what standard of proof would be necessary to determine that government officials were in part responsible for segregation except for those suggested by Justice Stewart. Justices Douglas, White, Brennan, and Marshall participated in dissenting against the Milliken decision. Justice Douglas felt that it was a serious blow to desegregation efforts and that it put the black cause back twenty years. The justices felt that the boundaries had nothing to do with the need for desegregation and that the imposition of a need to prove that official acts in surrounding areas caused segregation was beyond reason. They felt that the constitutional issue was of primary importance and equal protection must be achieved. They further noted that state officials (the board) were responsible for segregation and that no others need be considered for remedy. Filing jointly, the four stated: "I cannot subscribe to this emasculation of our constitutional guarantee of equal protection of the laws and must respectfully dissent. Our precedents, in my view, firmly establish that where, as here, state-imposed segregation has been demonstrated, it becomes the duty of the State to eliminate root and branch all vestiges of racial discrimination and to achieve the greatest possible degree of actual desegregation," 42 U.S.L.W. at 5269.

It is interesting to note that the dissenting justices felt that the court is beginning to yield to public pressure on this controversial issue. In noting this, the dissenting justices said: "...so public opposition, no matter how strident, cannot be permitted to divert this Court from the enforcement of the constitutional principles at issue in this case. Today's holding, I fear, is more a reflection of a perceived

public mood that we have gone far enough in enforcing the Constitution's guarantee of equal justice.....In the short run, it may seem to be the easier course to allow our great metropolitan areas to be divided up, each into two cities - one white, the other black - but it is a course, I predict, our people will ultimately regret," 42 U.S.L.W. at 5279.

The issue of area-wide officials being involved in segregation came to light in Wilmington, Delaware. In 1974, the federal district court ruled that plans should be submitted to desegregate Wilmington. They asked for a district-wide plan (city) and a metropolitan area plan. The order was delayed pending the outcome of the Detroit case. Following it, the district court again ordered the submission of two plans. Within the order, the district court noted what it considered to be deliberate a Hemph at segregation on a metropolitan area basis. Included were: real estate dealers who would not sell housing in certain areas to minorities, the construction of low-cost housing only within city limits, transporting of white students from Wilmington to private and parochial schools outside of the city limits, and bussing black students from the suburbs into the city to attend predominantly black schools. The most obvious attempt to maintain segregation was the elimination of Wilmington from the Delaware Educational Advancement Act of 1968 which gave voters the right to approve consolidation of school districts and gave the state legislature broad powers in reorganization. The court concluded that violations were obvious enough under the Supreme Court test to warrant consideration of a desegregation plan involving Wilmington and the suburbs.

The decision was appealed to the U.S. Supreme Court and on November 17, 1975, the court voted 5-3 to affirm the lower court's decision on Buchanan v. Evans, 44 U.S.L.W. 3299 (1975). No majority opinion was issued and in Justice Renquist's dissent he noted that the procedure of not issuing a majority opinion was incorrect and slipshod.

It is important to state that the Supreme Court did not mandate bussing, but affirmed the lower court's order that such a plan be submitted.

If the lower court would approve a metropolitan area bussing program, it is reasonable to assume that the decision will be appealed to the Supreme Court to determine if the remedy exceeds the violation.

Discussion of the Findings

Table 1 is a summary of major decisions and the positions that various justices have taken. The writer will analyze dissenting opinions to determine if a pattern has emerged based on individual rights.

It becomes apparent to the writer that certain justices have been ruling consistently against individual rights while others have been ruling consistently for individual rights.

Justices Burger, Powell, Blackmun and Renquist have consistently ruled against further extension of rights to the individual. Justices Marshall, Brennan, Douglas, and White have ruled for extending further rights to the individual. Justice Potter Stewart has been the Swing Justice.

Some consideration must also be given to the newest Justice, John Paul Stevens. It is difficult to get an accurate reading on exactly where he stands because on certain issues he has gone with the Nixon

TABLE 1
DISSENTING OPINIONS

Case	Justice(s) who dissented	Reason for dissent	Pro or anti individual rights
Gault (1967)	Stewart	1. Formal due process unnecessary 2. Not criminal proceedings-different intent	Anti
Tinker (1969)	Black	1. Fear transfer of control to courts 2. Flood of litigation	Anti
Goss (1975)	Powell, Blackmun Renquist, Burger	1. Due process not needed 2. Open new areas to litigation 3. Students do have property rights in ten-day suspension	Anti
Wood (1975)	Powell, Blackmun Renquist, Burger	1. Too harsh a standard for school officials 2. Won't get qualified people to serve 3. Loss of doctrine of qualified immunity 4. Double standard with Kent State	Anti
Roth (1972)	Marshall, Brennan Douglas Powell-No part	1. Have liberty and property interests 2. Government action could be arbitrary 3. Could cloud real issue with no hearing	Pro
Sinderman (1972)	Marshall, Brennan Douglas	1. Would be denied due process 2. Should have a statement of reasons	Pro
Milliken (1974)	Marshall, Douglas Brennan, White	1. Setback for blacks 2. Boundaries not important 3. Constitutional issue is primary 4. Rest of court responding to public pressure	Pro

appointed majority of Burger, Blackmun, Renquist and Powell. On other issues, he has gone with the more liberal element in the court. A good predictor would be his unwillingness to yield to the power of first amendment cases. The court upheld restrictions on the location of adult movie houses and Stevens held that some forms of expression were of lesser magnitude than others; thus, the first amendment rights held to different degrees depending on the circumstances.

MacKenzie (1976), in an overview of Supreme Court decisions, stated that on the last day of the term, the court made nine rulings cutting down the scope of fourth amendment protection, all over the dissent of Marshall and other liberal elements of the court.

Certain conclusions can now be drawn based on each area previously discussed. In general, the rights of the individual have come a long way in the past decade. The writer will attempt to predict if these rights have reached a limit in certain areas or whether they will continue to be refined and reinforced.

Suspension

A refinement of exactly what constitutes due process has evolved in this area. School districts will have to insure minimum due process procedures are followed when suspending students. The days of being arbitrary and capricious have come to an end. School administrators and board members will have to know the due process rights of children and follow them carefully or they may be sued for damages. Cases which come up where such violations have occurred will be won by the child.

Corporal Punishment

Once again, minimum due process procedures must be followed when administering corporal punishment. Schools should have a policy in writing and the staff should be made aware of it so as not to deny this precious right. If discriminatory challenges are made based on the fact that more males receive corporal punishment, the Supreme Court may declare it illegal based on Title IX regulations.

Search and Seizure

The concept of reasonable suspicion has come under close scrutiny. Already colleges need probable cause to search a dorm for contraband. Decisions on the lower levels have been conflicting. The Supreme Court will determine that reasonable suspicion standards apply to school initiated searches and to joint searches. Police initiated searches will receive fourth amendment protection only in college situations. The new conservative majority will rule that, in basic education, no fourth amendment protection applies beyond reasonable suspicion even in police searches conducted within the school to seize evidence of a crime.

Teacher Tenure

An onslaught of litigation for teachers who do not have tenure trying to establish property rights and liberty interests in their jobs will flood the courts with test cases. School districts not rehiring teachers will have to make contracts very explicit. They will have to be prepared to prove that a staff member did not have an "expectancy" of a position for the next year. This can be partially overcome by a

policy of frequent evaluation by school administrators with adequate notice of non-renewal of contracts. School districts not taking these precautions had better be ready to lose court cases.

Homosexuality

As society's attitude toward the homosexual changes, the Supreme Court will confront the issue of hiring or non-hiring directly. As long as the person has been honest in disclosing his homosexuality and prudent about his actions, he will be able to maintain his position. The concept of duty to privacy will be reinforced in future decisions.

The court will uphold the decision that a person's homosexuality will have to have an effect on his teaching prior to consideration for removal or certificate revocation. As always, criminal sexual acts will not be tolerated.

A school district will have to have a positive attitude toward the homosexual or be open to serious litigation in the future.

Desegregation

An area where the individual has lost ground is that of desegregation. Since limits have been put on desegregation, including the need to prove that deliberate acts of public officials caused segregation, much desegregation of our nation's metropolitan areas will not be possible. The concept of equal protection under the law will not be carried out in this area.

The precedent in Milliken will allow a great deal of segregation to remain.

If anyone is planning to challenge the constitutionality of a segregated area, he had better gather evidence that some corroboration had gone on between various government officials to cause segregation in the first place.

In conclusion, although the primary force over the past two decades has been protection of the individual, a new trend will emerge. In cases where Supreme Court precedents have been set, the decisions will remain consistent with earlier decisions. In areas where no Supreme Court action has been set, such as search and seizure of students, the rulings will not be in favor of the individual. The only exception in the writer's opinion is the area of homosexuality.

In the most recent desegregation cases, the new conservative majority is beginning to emerge. This will be the trend, primarily against giving new liberties to the individual ruling rather for corporate and government interests.

List of Cases and Bibliography

Acanfora v. Board of Education of Montgomery County, 359 F. Supp. 843 (1973).

Baker v. Owen, 395 F. Supp. 294 (1975).

Board of Regents of State Colleges, et al. v. Roth, 408 U.S. 564 (1972).

Brown v. Board of Education, 347 U.S. 483 (1954).

Buchanan v. Evans, 44 U.S.L.W. 3295 (1975).

Flygare, Thomas J. "Cross District Bussing in the Court Spotlight Again," Phi Delta Kappan, Vol. 57 (February, 1976), pp.411-412.

In Re Gault, 387 U.S. 1 (1969).

Glaser v. Marietta, 351 F. Suppl 555 (1972).

Goss v. Lopez, 419 U.S. 565 (1975).

Governing Board of Mountain View School District of Los Angeles County v. Metcalf, 111 Cal. Rptr. 724 (1974).

Keyes, et al. v. School District No. 1, Denver, Colorado, et al., 413 U.S. 189 (1973).

McConnel v. Anderson, 451 F. 2d. 196 (1971).

MacKenzie, John P. "Recent Decisions Show a Burger Court is Emerging," The Philadelphia Inquirer, Philadelphia, Pennsylvania (July 18, 1976), p. 1.

Milliken v. Bradley, 418 U.S. 714 (1974).

Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725 (1968).

Morrison v. State Board of Education, 1 Cal. 3d. 214 (1969).

People v. D., 34 N.Y. 2d. 483 (1974).

People v. Jackson, 219 N.Y.S. 2d. 731 (1971).

Perry v. Sindermann, 408 U.S. 593 (1972).

Piazzola v. Watkins, 442 F. 2d. 284 (1971).

Schevver v. Rhodes, 416 U.S. 232 (1974).

Smyth v. Lubbers, 398 F. Supp. 777 (1975).

State v. Mora 307 So. 2d. 317 (1975).

State v. Young, 216 S. E. 2d. 586 (1975).

Swann v. Charlotte Mecklenburg Board of Education, 402 U.S. 1 (1971).

Tinker v. Des Moines Community School District, 393 U.S. 503 (1969).

Wood v. Strickland, 420 U.S. 308 (1975).